

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JEBB WHEELER,

Appellant,

v.

DEPARTMENT OF AGRICULTURE ,

Respondent.

) Case No. SUSP-04-0018

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** Pursuant to RCW 41.64.060 and WAC 358-01-040, this appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair. The hearing was held at the Department of Transportation, Regional North Conference Room, 1551 N. Wenatchee Avenue, Wenatchee, Washington, on February 16, 2005. GERALD L. MORGEN, Member, listened to the recorded proceedings, reviewed the file and exhibits and participated in this decision.
]

1.2 **Appearances.** Appellant appeared *pro se*. Janetta Sheehan, Assistant Attorney General, represented Respondent Department of Agriculture.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a 10-day suspension for neglect of duty, malfeasance, willful violation of agency policy and gross misconduct. Respondent alleges Appellant falsified his time records, failed to be present at his assigned work

1 station without properly notifying his supervisor, received overtime pay for hours he did not work,
2 and falsified a federal inspection document.

3 4 **II. FINDINGS OF FACT**

5 2.1 Appellant Jebb Wheeler is a permanent employee for Respondent Washington State
6 Department of Agriculture. Appellant and Respondent are subject to Chapters 41.06 and 41.64
7 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely
8 appeal with the Personnel Appeals Board on March 29, 2004.

9
10 2.2 By letter dated February 23, 2004, Robert Gore, Assistant Director of the Commodity
11 Inspection Division, notified Appellant of his 10-day suspension without pay, effective on March 1,
12 2004, through March 12, 2004. Mr. Gore charged Appellant with neglect of duty, malfeasance,
13 gross misconduct and willful violation of agency policy. Mr. Gore wrote Appellant as follows:

14
15 a. You have failed to be present at your assigned workstation and have failed to
notify your supervisor of your intent to be absent.

16
17 b. You have falsified official department records including but not limited to
18 your daily time record by indicating you worked hours you did not work and/or
by including overtime hours you did not work. This has resulted in your
receiving overtime payments for which you were not entitled.

19
20 c. You have falsified an official federal/state inspection document by entering
21 inspection times that were not done during your work time. This places the
document in question and can place the program in a false light with regard to the
service we provide under state and/or federal authority.

22
23 2.3 As a Horticulture Inspector, Appellant's responsibilities include inspecting fresh fruits
24 and/or vegetables to standards of quality established by state and federal laws and/or regulations
25 and certifying in writing compliance or non-compliance. Appellant also issues federal certificates,
26 state certificates, shipping documents and other clearance documents for domestic and foreign

1 destinations, detailed inspection note sheets of samples inspected, federal phytosanitary certificates,
2 and state phytosanitary certificates declaring presence or absence of pests and disease. Inspectors
3 also complete daily reports documenting how much time they spent working and the type of
4 commodity inspected. The department's practice since the mid 1990's has been to prepare all
5 paperwork during work hours and there was a specific directive to inspectors that they not complete
6 any paperwork from home. In addition, any overtime work had to be approved by a supervisor in
7 advance to working the additional hours. Appellant was aware of these practices.

8
9 2.4 Respondent has adopted an Ethics/Conflict of Interest policy that requires all employees to
10 perform their duties with honesty and integrity in accordance with the "highest ethical and moral
11 standards" and to conduct state business in a manner that advances the public's interest. Appellant
12 was aware of Respondent's policy.

13
14 2.5 In May 2003, Appellant was assigned to perform inspection work at the Blue Star Growers.
15 Blue Star's hours of operation during the month of May were 7 a.m. to 5 p.m., with a one hour
16 lunch break. However, Appellant's designated work hours were from 8 a.m. to 5 p.m. Jeff Farmer,
17 Area Supervisor, became aware that Appellant was claiming overtime hours for the month of May
18 2003. As a result, Mr. Farmer conducted a review of Appellant's timesheets. Mr. Farmer also
19 spoke to an employee at Blue Star Growers who indicated that in May 2003, Appellant typically
20 departed the warehouse for the day between 4 p.m. and 5 p.m. After review of Appellant's
21 timesheets to the Blue Star's hours, Mr. Farmer discovered Appellant was claiming he worked
22 overtime at the warehouse on a dozen occasions in May 2003. Appellant never sought or was
23 granted permission to work overtime by anyone in a supervisory capacity.

24
25 2.6 After reviewing the testimony and evidence, we find Appellant falsified timesheets on the
26 following dates: May 2, 7, 8, 9, 13, 14, 16, 20, 21, 22, 23, and 27, 2003. A preponderance of the

1 credible evidence supports that Appellant was not at his assigned workstation on these occasions,
2 failed to notify his supervisor of his absences from work and claimed overtime for hours he did not
3 work.

4
5 2.7 Respondent charges Appellant with two additional instances of misconduct related to
6 misrepresenting inspections on federal inspection sheets. On a Federal-State Inspection Certificate
7 dated May 8, Appellant claimed he conducted an inspection at Blue Star Growers from 5 p.m. to
8 6:30 p.m.; however, the warehouse closed at 5 p.m. On May 23, Appellant indicated on Federal-
9 State Notesheet Inspection Report for export to Mexico that he conducted the inspection from 4:30
10 p.m. until 5:30 p.m. on May 23, but Blue Star Growers closed the warehouse at 4:30 p.m. that day.
11 By agency practice, Appellant could only issue the certificates at the time he finished the
12 inspection. Respondent has proven by a preponderance of the credible evidence that Appellant
13 falsified a federal inspection certificate when he issued the certificate indicating he conducted an
14 inspection at a time when he could not have had access to the fruit because the warehouse was
15 closed.

16
17 2.8 Robert Gore, Assistant Director for the Commodity Inspection Division, held a pre-
18 disciplinary meeting with Appellant on November 7, 2003. During the meeting, Appellant
19 indicated that his timesheets included time he spent driving to and from Blue Star Growers, time he
20 worked through his lunch hour and time he spent on completing paperwork outside his normal work
21 hours. Appellant also indicated that on May 16, he was away from his work site because his
22 daughter missed her school bus and that on May 21, he left early because of a family emergency.
23 Appellant admitted that he never notified his supervisor he was absent from work on these
24 occasions, that he was working through his lunch breaks or that he was completing paperwork from
25 his home. Appellant admitted he did not submit leave slips for his absences.

2.9 Robert Gore was Appellant's appointing authority when the discipline was imposed. After reviewing the evidence, two response letters from Appellant's attorney, as well as Appellant's responses on November 7, Mr. Gore concluded Appellant engaged in misconduct when he was absent from work without authorization, claimed hours he did not work, worked overtime hours during his lunch breaks and after regular working hours, and provided false information on official records. Mr. Gore was particularly troubled by Appellant's falsification of official inspection records, especially in light of the department's responsibility to provide objective and impartial third party inspections. Mr. Gore also found Appellant's issuance of a certificate stating to a foreign buyer that a product he failed to inspect was free of disease and pests to be a particularly egregious action. After considering Appellant's response to the charges, Mr. Gore found no factors to mitigate Appellant's misconduct; therefore, he determined that a 10-day suspension would send a clear message that Appellant's misconduct would not be tolerated.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues the evidence establishes that Appellant failed to be present at his work station, failed to fill out leave slips for his absences, falsified timesheets, claimed overtime he did not work and falsified a federal document. Respondent asserts Appellant was not exempt from abiding by his assigned work hours, from obtaining supervisory authorization to change his hours, or to complete paperwork at home. Respondent argues Appellant failed to act in a manner consistent with his duty when he failed to be present at work and perform his duties. Respondent argues that Appellant engaged in malfeasance and gross misconduct when he collected overtime pay that he was not entitled to receive. Respondent further asserts that Appellant engaged in gross misconduct when he falsified a federal document, thereby bringing into question the veracity of the department's documents.

1 3.2 Appellant contends his job duties are not entirely comprised of fruit inspection work and
2 because he has paperwork to complete and travel time, the hours he documented would be different
3 than the hours documented by Blue Star. Appellant asserts he can be compensated for work done
4 away from the inspection site and for time spent traveling to the warehouse. Appellant further
5 asserts that his timesheets may have been completed improperly because he was provided with
6 conflicting instructions on how to document his time. Appellant contends that management is
7 completely out of touch with the day-to-day operations in the field and that the manipulating of
8 schedules and generating of overtime by other inspectors is an ongoing and prevalent issue which
9 management ignores. Appellant furthers asserts he was singled out by management as a
10 troublemaker because he adamantly opposed and spoke out against the promotion of another
11 employee who was not the best-qualified candidate for the position.

12 13 IV. CONCLUSIONS OF LAW

14 4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.
15

16 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
17 the charges upon which the action was initiated by proving by a preponderance of the credible
18 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
19 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
20 Corrections, PAB No. D82-084 (1983).
21

22 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
23 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
24 of Social & Health Services, PAB No. D86-119 (1987).
25
26

1 4.4 Malfeasance is the commission of an unlawful act, the act of doing what one ought not to
2 do, or the performance of an act that ought not to be done, that affects, interrupts, or interferes with
3 the performance of official duty. Parramore v Dep't of Social & Health Services, PAB No. D94-
4 135 (1995).

5
6 4.5 Gross misconduct is flagrant misbehavior that adversely affects the agency's ability to carry
7 out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant
8 misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's
9 interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

10
11 4.6 Willful violation of published employing agency or institution or Personnel Resources
12 Board rules or regulations is established by facts showing the existence and publication of the rules
13 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
14 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

15
16 4.7 Appellant had a duty to provide truthful information on his timesheets and to provide factual
17 and accurate information on federal/inspection documents. Respondent has met its burden of
18 proving that Appellant submitted timesheets indicating he was at work when he had in fact left for
19 the day and that he deliberately misstated the hours he worked in order to receive overtime pay he
20 was not entitled to collect. Appellant's false claim of overtime pay and misrepresentation of
21 information on an inspection document undermined the trust placed in him by the agency.
22 Respondent has proven by a preponderance of the credible evidence that Appellant's actions
23 constitute a neglect of duty and violated the agency's ethics policy. Furthermore, Appellant's
24 receipt of overtime payment to which he was not entitled constitutes malfeasance and gross
25 misconduct. Appellant presented no evidence to mitigate his misconduct.

1 4.8 In determining whether a sanction imposed is appropriate, consideration must be given to
2 the facts and circumstances, including the seriousness and circumstances of the offenses. The
3 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to
4 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the
5 program. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

6
7 4.9 Under the proven facts and circumstances, a 10-day suspension is appropriate, and the
8 appeal of Jebb Wheeler should be denied.

9
10 **V. ORDER**

11 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Jebb Wheeler is denied.

12
13 DATED this _____ day of _____, 2005.

14
15 WASHINGTON STATE PERSONNEL APPEALS BOARD

16
17 _____
18 Walter T. Hubbard, Chair

19
20 _____
21 Gerald L. Morgen, Member